



DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 723, 724, 845, and 846

RIN 1029-AC84

[Docket ID: OSM 2023-0006; S1D1S SS08011000 SX064A000 234S180110; S2D2SSS08011000 SX064A00 23XS501520]

Civil Monetary Penalty Inflation Adjustments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), and Office of Management and Budget (OMB) guidance, this rule adjusts for inflation the level of civil monetary penalties assessed under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and the implementing regulations.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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I. Background

A. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

Section 518 of SMCRA, 30 U.S.C. 1268, authorizes the Secretary of the Interior to assess civil monetary penalties (CMPs) for violations of SMCRA. The Federal regulations implementing the CMP provisions of section 518 are located in 30 CFR Parts 723, 724, 845, and 846. We are adjusting CMPs in six sections—30 CFR 723.14, 723.15,

724.14, 845.14, 845.15, and 846.14.

On November 2, 2015, the President signed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Public Law No. 114-74) (2015 Act) into law. The 2015 Act, which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (codified, as amended, at 28 U.S.C. 2461 note), requires Federal agencies to promulgate rules to adjust the level of CMPs to account for inflation. The 2015 Act required an initial “catch-up” adjustment. The Office of Surface Mining Reclamation and Enforcement (OSMRE) published the initial adjustment in the **Federal Register** on July 8, 2016 (81 FR 44535), and the adjustment took effect on August 1, 2016. The 2015 Act also requires agencies to publish annual inflation adjustments. These adjustments are aimed at maintaining the deterrent effect of civil penalties and furthering the policy goals of the statutes that authorize the penalties. Further, the 2015 Act provides that agencies must adjust civil monetary penalties “notwithstanding section 553 of [the Administrative Procedure Act (APA)].” Therefore, “the public procedure the APA generally requires – notice, an opportunity for comment, and a delay in effective date – is not required for agencies to issue regulations implementing the annual adjustment.”

December 15, 2022, Memorandum for the Heads of Executive Departments and Agencies (M-23-05) from Shalanda D. Young, Office of Management and Budget, *Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (OMB Memorandum), at 3-4.

Pursuant to SMCRA and the 2015 Act, this final rule reflects the statutorily required CMP adjustments as follows:

CFR Citation	Points (where applicable)	Current Penalty Dollar Amounts	Adjusted Penalty Dollar Amounts
30 CFR 723.14	1	\$73	\$79
	2	\$148	\$159

	3	\$221	\$238
	4	\$294	\$317
	5	\$368	\$397
	6	\$442	\$476
	7	\$515	\$555
	8	\$586	\$631
	9	\$662	\$713
	10	\$736	\$793
	11	\$808	\$871
	12	\$883	\$951
	13	\$954	\$1,028
	14	\$1,029	\$1,109
	15	\$1,105	\$1,191
	16	\$1,177	\$1,268
	17	\$1,250	\$1,347
	18	\$1,326	\$1,429
	19	\$1,398	\$1,506
	20	\$1,471	\$1,585
	21	\$1,546	\$1,666
	22	\$1,619	\$1,744
	23	\$1,692	\$1,823
	24	\$1,764	\$1,901
	25	\$1,839	\$1,981
	26	\$2,207	\$2,378
	27	\$2,575	\$2,774
	28	\$2,940	\$3,168
	29	\$3,170	\$3,416
	30	\$3,678	\$3,963
	31	\$4,045	\$4,358
	32	\$4,414	\$4,756
	33	\$4,782	\$5,152
	34	\$5,150	\$5,549
	35	\$5,517	\$5,944
	36	\$5,885	\$6,341
	37	\$6,254	\$6,738
	38	\$6,621	\$7,134
	39	\$6,988	\$7,529
	40	\$7,355	\$7,925
	41	\$7,726	\$8,324
	42	\$8,092	\$8,719
	43	\$8,458	\$9,113
	44	\$8,827	\$9,511
	45	\$9,195	\$9,907
	46	\$9,563	\$10,304
	47	\$9,930	\$10,699
	48	\$10,299	\$11,097
	49	\$10,666	\$11,492
	50	\$11,033	\$11,888
	51	\$11,400	\$12,283
	52	\$11,770	\$12,682

	53	\$12,138	\$13,078
	54	\$12,506	\$13,475
	55	\$12,875	\$13,872
	56	\$13,242	\$14,268
	57	\$13,608	\$14,662
	58	\$13,976	\$15,058
	59	\$14,345	\$15,456
	60	\$14,712	\$15,851
	61	\$15,079	\$16,247
	62	\$15,448	\$16,644
	63	\$15,816	\$17,041
	64	\$16,184	\$17,437
	65	\$16,550	\$17,832
	66	\$16,920	\$18,230
	67	\$17,287	\$18,626
	68	\$17,654	\$19,021
	69	\$18,022	\$19,418
	70	\$18,391	\$19,815
30 CFR 723.15(b) (Assessment of separate violations for each day)		\$2,758	\$2,972
30 CFR 724.14(b) (Individual civil penalties)		\$18,391	\$19,815
30 CFR 845.14	1	\$73	\$79
	2	\$148	\$159
	3	\$221	\$238
	4	\$294	\$317
	5	\$368	\$397
	6	\$442	\$476
	7	\$515	\$555
	8	\$586	\$631
	9	\$662	\$713
	10	\$736	\$793
	11	\$808	\$871
	12	\$883	\$951
	13	\$954	\$1,028
	14	\$1,029	\$1,109
	15	\$1,105	\$1,191
	16	\$1,177	\$1,268
	17	\$1,250	\$1,347
	18	\$1,326	\$1,429
	19	\$1,398	\$1,506
	20	\$1,471	\$1,585
	21	\$1,546	\$1,666
	22	\$1,619	\$1,744
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	24	\$1,764	\$1,901

	25	\$1,839	\$1,981
	26	\$2,207	\$2,378
	27	\$2,575	\$2,774
	28	\$2,940	\$3,168
	29	\$3,170	\$3,416
	30	\$3,678	\$3,963
	31	\$4,045	\$4,358
	32	\$4,414	\$4,756
	33	\$4,782	\$5,152
	34	\$5,150	\$5,549
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	36	\$5,885	\$6,341
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	40	\$7,355	\$7,925
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	66	\$16,920	\$18,230
	67	\$17,287	\$18,626
	68	\$17,654	\$19,021
	69	\$18,022	\$19,418
	70	\$18,391	\$19,815
30 CFR 845.15(b) (Assessment of separate violations for each day)			

		\$2,758	\$2,972
30 CFR 846.14(b) (Individual civil penalties)		\$18,391	\$19,815

In the chart above, there are no numbers listed in the “Points” column relative to 30 CFR 723.15(b), 30 CFR 724.14(b), 30 CFR 845.15(b), and 30 CFR 846.14(b) because those regulatory provisions do not set forth numbers of points. For those provisions, the current regulations only set forth the dollar amounts shown in the chart in the “Current Penalty Dollar Amounts” column; the adjusted amounts, which we are adopting in this rule, are shown in the “Adjusted Penalty Dollar Amounts” column.

B. Calculation of Adjustments

OMB issued guidance on the 2023 annual adjustments for inflation. *See* OMB Memorandum (December 15, 2022). The OMB Memorandum notes that the 1990 Act defines “civil monetary penalty” as “any penalty, fine, or other sanction that ... is for a specific monetary amount as provided by Federal law; or ... has a maximum amount provided for by Federal law; and ... is assessed or enforced by an agency pursuant to Federal law; and ... is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts” *Id.* at 2. It further instructs that agencies “are to adjust ‘the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment.’” *Id.* The 1990 Act, as amended by the 2015 Act, and the OMB Memorandum specify that the annual inflation adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (the CPI-U) published by the Department of Labor for the month of October in the year of the previous adjustment, and the October CPI-U for the preceding year. The recent OMB Memorandum specified that the cost-of-living adjustment multiplier for 2023, not seasonally adjusted, is 1.07745 (the October 2022 CPI-U (298.012) divided by the

October 2021 CPI-U (276.589) = 1.07745). OSMRE used this guidance to identify applicable CMPs and calculate the required inflation adjustments. The 1990 Act, as amended by the 2015 Act, specifies that any resulting increases in CMPs must be rounded according to a stated rounding formula and that the increased CMPs apply only to CMP assessments that occur after the date that the increases take effect.

Generally, OSMRE assigns points to a violation as described in 30 CFR 723.13 and 845.13. The CMP owed is based on the number of points received, ranging from one point to 70 points. For example, under our existing regulations in 30 CFR 845.14, a violation totaling 70 points would amount to a \$18,391 CMP. To adjust this amount, we multiply \$18,391 by the 2022 inflation factor of 1.07745, resulting in a raw adjusted amount of \$19,815.38. Because the 2015 Act requires us to round any increase in the CMP amount to the nearest dollar, in this case a violation of 70 points would amount to a new CMP of \$19,815. Pursuant to the 2015 Act, the increases in this Final Rule apply to CMPs assessed after the date the increases take effect, even if the associated violation predates the applicable increase.

C. Effect of the Rule in Federal Program States and on Indian Lands

OSMRE directly regulates surface coal mining and reclamation operations within a State or on Indian lands if the State or Tribe does not obtain its own approved program pursuant to sections 503 or 710(j) of SMCRA, 30 U.S.C. 1253 or 1300(j). The increases in CMPs contained in this rule will apply to the following Federal program States: Arizona, California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for those States appear at 30 CFR Parts 903, 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. Under 30 CFR 750.18, the increases in CMPs also apply to Indian lands under the Federal program for Indian lands.

D. Effect of the Rule on Approved State Programs

As a result of litigation, State regulatory programs are not required to mirror all of the penalty provisions of our regulations. *See In re Permanent Surface Mining Regul. Litig.*, No. 79-1144, 1980 U.S. Dist. LEXIS 17722, at *21-23 (D.D.C. Feb. 26, 1980); 1980 U.S. Dist. LEXIS 17660, at *87-88 (D.D.C. May 16, 1980). Thus, this rule has no effect on CMPs in States with SMCRA primacy.

II. Procedural Matters

A. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) within OMB will review all significant rules. OIRA has determined that agency regulations exclusively implementing the annual inflation adjustments are not significant, provided they are consistent with the OMB Memorandum. Because this final rule exclusively implements the annual inflation adjustments, is consistent with the OMB Memorandum, and will have an annual impact of less than \$100 million, it is not significant under Executive Order 12866.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive Order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements, to the extent permitted by statute.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. *See* 5 U.S.C. 603(a) and 604(a). The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust civil penalties annually for inflation “notwithstanding section 553 [of the Administrative Procedure Act].” Thus, no proposed rule will be published, and the RFA does not apply to this rulemaking.

C. Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2), the Congressional Review Act. This rule:

- (a) Will not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector, of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not

required.

F. Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

G. Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

H. Consultation with Indian Tribes (Executive Order 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy, under Departmental Manual Part 512, Chapters 4 and 5, and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on Federally-recognized Tribes or Alaska Native Claims Settlement Act (ANCSA) Corporations, and that consultation under the Department's Tribal consultation policy is not required.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action under the National Environmental Policy Act of 1969 (NEPA) because of the non-discretionary nature of the civil penalty adjustment as required by law (*see* 40 CFR 1508.1(q)(1)(ii)). The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires OSMRE to annually adjust the amounts of its civil penalties to account for inflation as measured by the Department of Labor's Consumer Price Index. Accordingly, OSMRE has no discretion in the execution of the civil penalty adjustments reflected in this final rule. Because this rule is not a major Federal action, it is therefore not subject to the requirements of NEPA. Even if this were a discretionary action subject to NEPA, which it is not, a detailed statement under NEPA would nevertheless not be required because, as a regulation of an administrative nature, this rule would otherwise be covered by a categorical exclusion (*see* 43 CFR 46.210(i)). OSMRE has determined that the rule does not implicate any of the extraordinary circumstances listed in 43 CFR 46.215 that would prevent reliance on the categorical exclusion. Therefore, a detailed statement under NEPA is not required.

K. Effects on Energy Supply, Distribution, and Use (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. Clarity of this Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you believe that we have not met these requirements in issuing this final rule, please contact the individual listed in the “**FOR FURTHER INFORMATION CONTACT**” section. Your comments should be as specific as possible in order to help us determine whether any future revisions to the rule are necessary. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

M. Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. No. 106-554).

N. Administrative Procedure Act

We are issuing this final rule without prior public notice or opportunity for public comment. As discussed above, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to publish adjusted penalties annually. Under the 2015 Act, the public procedure that the Administrative Procedure Act generally requires – notice, an opportunity for comment, and a delay in the effective date – is not required for agencies to issue regulations implementing the annual adjustments required by the 2015 Act. *See* OMB Memorandum, M-23-05, at 3-4.

O. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 3701 *et seq.*) directs Federal agencies to use voluntary consensus standards when implementing regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. This final rule is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements

would be inconsistent with SMCRA, and the requirements would not be applicable to this final rulemaking.

*P. Protection of Children from Environmental Health Risks and Safety Risks
(Executive Order 13045)*

Executive Order 13045 requires that environmental and related rules separately evaluate the potential impact to children. However, Executive Order 13045 is inapplicable to this rulemaking because this is not a substantive rulemaking, and a notice of proposed rulemaking was neither required nor prepared. *See* sections 2-202 and 5-501 of Executive Order 13045.

Delegation of Signing Authority

The action taken herein is pursuant to an existing delegation of authority.

List of Subjects

30 CFR part 723

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR part 724

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR part 845

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR part 846

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

Laura Daniel-Davis,

*Principal Deputy Assistant Secretary,
Land and Minerals Management*

For the reasons given in the preamble, the Department of the Interior amends 30 CFR parts 723, 724, 845, and 846 as set forth below.

PART 723—CIVIL PENALTIES

1. The authority citation for part 723 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

2. Revise table 1 to § 723.14 to read as follows:

§ 723.14 Determination of amount of penalty.

* * * * *

Table 1 to § 723.14

Points	Dollars
1.....	79
2.....	159
3.....	238
4.....	317
5.....	397
6.....	476
7.....	555
8.....	631
9.....	713
10.....	793
11.....	871
12.....	951
13.....	1,028
14.....	1,109
15.....	1,191
16.....	1,268
17.....	1,347
18.....	1,429
19.....	1,506
20.....	1,585
21.....	1,666
22.....	1,744
23.....	1,823
24.....	1,901
25.....	1,981
26.....	2,378
27.....	2,774

28.....	3,168
29.....	3,416
30.....	3,963
31.....	4,358
32.....	4,756
33.....	5,152
34.....	5,549
35.....	5,944
36.....	6,341
37.....	6,738
38.....	7,134
39.....	7,529
40.....	7,925
41.....	8,324
42.....	8,719
43.....	9,113
44.....	9,511
45.....	9,907
46.....	10,304
47.....	10,699
48.....	11,097
49.....	11,492
50.....	11,888
51.....	12,283
52.....	12,682
53.....	13,078
54.....	13,475
55.....	13,872
56.....	14,268
57.....	14,662
58.....	15,058
59.....	15,456
60.....	15,851
61.....	16,247
62.....	16,644
63.....	17,041
64.....	17,437
65.....	17,832
66.....	18,230
67.....	18,626
68.....	19,021
69.....	19,418
70.....	19,815

3. In § 723.15, revise paragraph (b) introductory text to read as follows:

§ 723.15 Assessment of separate violations for each day.

* * * * *

(b) In addition to the civil penalty provided for in paragraph (a) of this section,

whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to section 521(a) of the Act, 30 U.S.C. 1271(a), a civil penalty of not less than \$2,972 will be assessed for each day during which such failure to abate continues, except that:

* * * * *

PART 724—INDIVIDUAL CIVIL PENALTIES

4. The authority citation for part 724 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

5. In § 724.14, revise the first sentence of paragraph (b) to read as follows:

§ 724.14 Amount of individual civil penalty.

* * * * *

(b) The penalty will not exceed \$19,815 for each violation. * * *

PART 845—CIVIL PENALTIES

6. The authority citation for part 845 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, 31 U.S.C. 3701, Pub. L.

100-202, and Pub. L. 100-446.

7. Revise table 1 to § 845.14 to read as follows:

§ 845.14 Determination of amount of penalty.

* * * * *

Table 1 to § 845.14

Points	Dollars
1.....	79
2.....	159
3.....	238
4.....	317
5.....	397
6.....	476
7.....	555
8.....	631
9.....	713

10.....	793
11.....	871
12.....	951
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29.....	3,416
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32.....	4,756
33.....	5,152
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36.....	6,341
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67.....	18,626
68.....	19,021
69.....	19,418
70.....	19,815

8. In § 845.15, revise paragraph (b) introductory text to read as follows:

§ 845.15 Assessment of separate violations for each day.

* * * * *

(b) In addition to the civil penalty provided for in paragraph (a) of this section, whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to section 521(a) of the Act, 30 U.S.C. 1271(a), a civil penalty of not less than \$2,972 will be assessed for each day during which such failure to abate continues, except that:

* * * * *

PART 846—INDIVIDUAL CIVIL PENALTIES

9. The authority citation for part 846 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

10. In § 846.14, revise the first sentence of paragraph (b) to read as follows:

§ 846.14 Amount of individual civil penalty.

* * * * *

(b) The penalty will not exceed \$19,815 for each violation. * * *